



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-909

Steel Nails from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

SUMMARY: On July 25, 2012, the United States Court of International Trade (“CIT”) sustained the Department of Commerce's (“Department”) results of redetermination, which construed the scope of the *Order*¹ as including steel nails found within Target Corporation's toolkits from the People's Republic of China (“PRC”), pursuant to the CIT's remand order in *Mid Continent Nail Corp. v. United States*, Slip Op. 12-31, Court No. 10-00247 (March 7, 2012) (“*Mid Continent II*”). See May 14, 2012 “Final Results of Second Remand Redetermination Pursuant To Remand Order” (second remand redetermination); *Mid Continent Nail Corp. v. United States*, Slip Op. 12-97, Court No. 10-00247 (July 25, 2012) (“*Mid Continent III*”). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending its final scope ruling on certain steel nails from the PRC contained within toolkits. See Final Scope Ruling: Certain Steel Nails from the People's Republic of China, Request by Target Corporation, Memorandum from James C. Doyle, Director Office 9, to Edward C. Yang, Acting Deputy

¹ *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (“*Order*”).

Assistant Secretary for Antidumping and Countervailing Duty Operations, dated August 10, 2010 (“Final Scope Ruling”).

EFFECTIVE DATE: August 4, 2012.

FOR FURTHER INFORMATION CONTACT: Jamie Blair-Walker, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2615.

SUPPLEMENTARY INFORMATION: On August 10, 2010, the Department issued a final scope ruling on toolkits from the PRC imported by Target Corporation. *See* Final Scope Ruling. In the Final Scope Ruling, the Department found that steel nails within Target’s toolkits from the PRC were not covered by the *Order* because the toolkits themselves did not meet the description of subject merchandise. *See* Final Scope Ruling.

In *Mid Continent Nail Corp. v. United States*, 770 F. Supp. 2d 1372 (CIT 2011) (“*Mid Continent I*”), the CIT remanded the Final Scope Ruling to Commerce to articulate a test it would apply consistently to determine the proper focus of a mixed-media scope ruling and to identify its legal authority to do so. *See Mid Continent I*, 770 F. Supp. 2d at 1383. Commerce then issued a remand redetermination finding that, pursuant to a mixed-media analysis, the toolkits were not subject to the *Order*. *See Final Results of Redetermination Pursuant to Remand Order in Mid Continent Nail Corporation v. United States and Target Corporation*, dated October 17, 2011 (first remand redetermination).

In *Mid Continent II*, the CIT again remanded to Commerce, ordering the Department to issue a scope determination that construes the scope of the *Order* as including the steel nails found within Target Corporation’s toolkits. *See Mid Continent II*, at 11.

On May 14, 2012, the Department issued its second remand redetermination pursuant to *Mid Continent II*. Pursuant to the remand order in *Mid Continent II*, under protest, we construed the scope of the *Order* as including the steel nails found within toolkits, including those imported by Target Corporation. The CIT sustained the Department's remand redetermination on July 25, 2012. *See Mid Continent III*.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's July 25, 2012, judgment sustaining the Department's second remand redetermination construing the scope of the *Order* as including the steel nails found within toolkits (including those imported by Target Corporation), constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Scope Ruling

Because there is now a final court decision with respect to steel nails found within Target Corporation's toolkits from the PRC, the Department amends its final scope ruling and now finds that the scope of the *Order* includes steel nails found within toolkits, including those imported by Target Corporation. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection if the Court's decision is not appealed or if it is affirmed on appeal.

This notice is issued and published in accordance with sections 516A(c)(1) of the Tariff Act of 1930, as amended.

Paul Piquado
Assistant Secretary
for Import Administration

August 1, 2012_
(date)

[FR Doc. 2012-19298 Filed 08/03/2012 at 8:45 am; Publication Date: 08/06/2012]